

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LA SALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

SEP 5 2012

THOMAS F. MCFARLAND

September 4, 2012

By UPS overnight mail

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

232924

Re: Finance Docket No. 35673, *ABE Fairmont, LLC -- Acquisition and Operation
Exemption -- Fillmore Western Railway Company*

Dear Ms. Brown:

Hereby transmitted is the original and 10 copies of a Verified Notice Of Exemption
Under 49 C.F.R. § 1150.31 for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$1,800 for the filing fee.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Applicant

FILED Low mp891562 mpSTR1

FILED

SEP 5 2012

**SURFACE
TRANSPORTATION BOARD**

RECEIVED
SEP 15 2012
SURFACE
TRANSPORTATION BOARD

**ENTERED
Office of Proceedings**

SEP 6 2012

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

ABE FAIRMONT, LLC -- ACQUISITION)
AND OPERATION EXEMPTION --) FINANCE DOCKET
FILLMORE WESTERN RAILWAY) NO. 35673
COMPANY)

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

ABE FAIRMONT, LLC
1214 County Road G
Fairmont, NE 68354

Applicant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Applicant

Date Filed: September 5, 2012

SEP 5 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

ABE FAIRMONT, LLC -- ACQUISITION)	
AND OPERATION EXEMPTION --)	FINANCE DOCKET
FILLMORE WESTERN RAILWAY)	NO. 35673
COMPANY)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1150.31 *et seq.*, ABE FAIRMONT, LLC (ABE), a noncarrier, hereby provides notice of its class exemption from 49 U.S.C. § 10901 for its acquisition from Fillmore Western Railway Company (FWRC) and operation of a rail line between a point of connection to BNSF Railway Company (BNSF) at BNSF Milepost 1.7 and the north property line of County Road H, a distance of approximately two miles at or near Fairmont, Fillmore County, NE (the Rail Line). The Rail Line is shaded in yellow on a map that is attached as Appendix 1.

EXPLANATION OF THE TRANSACTION

The Rail Line is part of 64.5 miles of rail line that Fillmore Western Railway Company (FWRY) acquired from a predecessor of BNSF in 1996. *See Fillmore Western R. Co. -- Acq. & Oper. Exempt -- Burlington Northern Railroad Company*, 1996 STB LEXIS 912 (F.D. No. 33299, decision served December 12, 1996). More particularly, the Rail Line is part of an 8.3-mile rail line between Milepost 1.7 at Fairmont and Milepost 10.0 at or near Geneva, NE. In 2001, FWRY was authorized to abandon the Fairmont-Geneva rail line. *See Fillmore Western*

Ry Co. -- Aban. Exempt -- in Fillmore County, NE, 2001 STB LEXIS 583. (Docket No. AB-492 [Sub-No. 2X], decision served June 27, 2001).

ABE operates an ethanol plant at Fairmont adjacent to FWRV's Fairmont-Geneva rail line. After the effective date of the class exemption for abandonment of the Fairmont-Geneva rail line, ABE purchased the 2-mile Rail Line for its private purposes under the mistaken understanding that as abandoned track it was no longer subject to Board jurisdiction. However, ABE recently learned that FWRV failed to consummate the authorized abandonment as required by 49 C.F.R. § 1152.29(c)(2), with the result that the abandonment authority expired. Consequently, unknown to ABE, the Rail Line was subject to Board jurisdiction when ABE acquired it from FWRV, and remains so at present.

Thus, ABE unknowingly became a rail carrier as to the Rail Line. In view of that status, ABE is filing this Verified Notice of Exemption for belated authorization of its acquisition of the Rail Line from FWRV.¹⁷

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant.

Applicant is ABE Fairmont, LLC, 1214 County Road G, Fairmont, NE 68354.

b) The name, address, and telephone number of the representative of the applicant who should receive correspondence.

¹⁷ The tracks of the Fairmont-Geneva rail line at and south of County Road H have been removed. The land in the right-of-way of that segment is being farmed by adjacent landowners.

Applicant's representative is Thomas F. McFarland. Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112. ph (312) 236-0204. fax (312) 201-9695. mcfarland@'aol.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached,

An agreement was reached several years ago for ABE to acquire the Rail Line from FWRC and to operate it.

(d) The operator of the property:

The operator of the property will be ABE.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject operating authority

The entity transferring the Rail Line was FWRC, current address unknown.

(2) The proposed time schedule for consummation of the transaction,

The transaction will be consummated no sooner than 30 days after filing of this notice with the Board.

(3) The mile-posts of the subject property, including any branch lines, and

The Rail Line extends between point of connection with BNSF Railway Company at BNSF Milepost 1.7 and the north boundary line of County Road H, at Fairmont, Fillmore County, NE.

(4) The total route miles being acquired,

A total of approximately two miles of rail line will be acquired and operated.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

The required map is attached as Appendix 1.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier

Attached to this notice as Appendix 2 is a verification that ABE's projected revenues do not exceed those that would qualify it as a Class III rail carrier.

VERIFICATION

The verification attached to this notice as Appendix 2 includes a verification of all facts contained in this notice.

REVENUES LESS THAN \$5 MILLION PER YEAR

The verification attached as Appendix 2 includes a verification that the projected revenues of ABE will not exceed \$5 million per year.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

Pursuant to 49 C.F.R. § 1105.6(c)(2), no environmental documentation or report is required for the proposed transaction. Pursuant to 49 C.F.R. § 1105.8(b)(2), no historic documentation or report is required for the proposed transaction.

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), no labor protection is required for the proposed transaction.

CAPTION SUMMARY

Attached to this notice as Appendix 3 is a caption summary required by 49 C.F.R. § 1150.34.

LAND GRANT RIGHT-OF-WAY

Applicant is not aware of any land grant right-of-way in the Rail Line.

NO INTERCHANGE COMMITMENTS

There were no interchange commitments between ABE and FWRC.

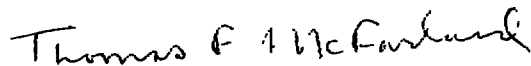
CONCLUSION

WIIEREFOR, the Board should publish notice of the exemption in the *Federal Register* within 16 days of its filing.

Respectfully submitted,

ABE FAIRMONT, LLC
1214 County Road G
Fairmont, NE 68354

Applicant



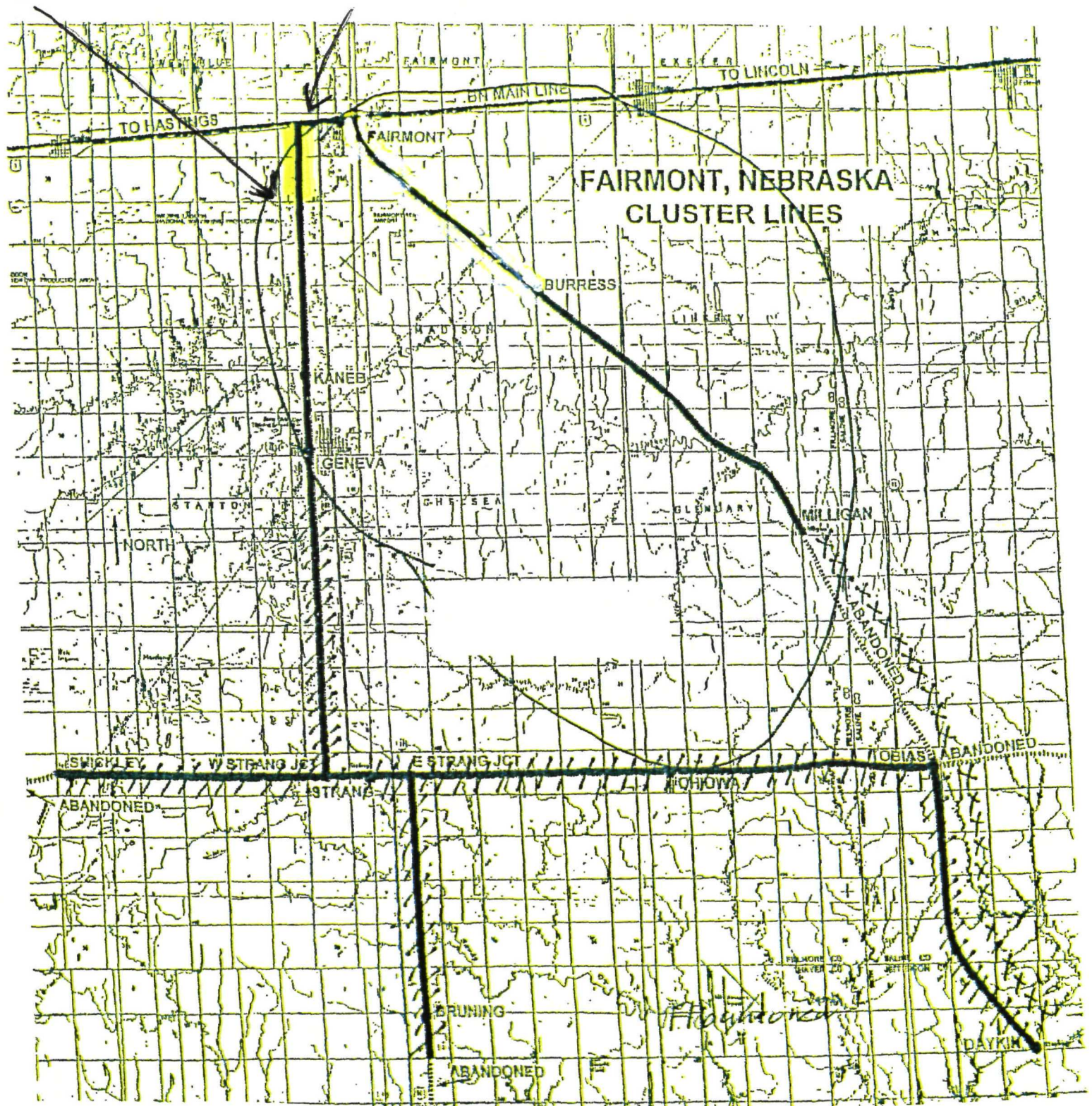
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Attorney for Applicant

Date Filed: September 5, 2012

COUNTY ROAD H

MILEPOST 1.7



F.D. No. 35673

Appendix 2

VERIFICATION

STATE OF NEBRASKA)
) SS:
COUNTY OF FILLMORE)

GRANT H. JOHANSON, being duly sworn, states that he is an authorized representative of ABE FAIRMONT, LLC (ABE); that the projected annual revenue of ABE to be created by its acquisition and operation of a rail line from Fillmore Western Railway Company will not exceed \$5 million; that ABE's projected revenues do not exceed those that would qualify it as a Class III rail carrier; and that all statements in ABE's Notice of Exemption for such acquisition and operation are true and correct.



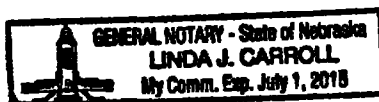
GRANT H. JOHANSON

SUBSCRIBED AND SWORN to
before me this 31 day
of August, 2012.



Notary Public

My Commission Expires:



CAPTION SUMMARY

**SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION**

(Finance Docket No. 35673)

**ABE FAIRMONT, LLC -- ACQUISITION AND OPERATION
EXEMPTION -- FILLMORE WESTERN RAILWAY COMPANY**

ABE Fairmont, LLC, (ABE), a noncarrier, has filed a notice of its class exemption from 49 U.S.C. § 10901 for its acquisition from Fillmore Western Railway Company and operation of a rail line extending between point of connection with BNSF Railway Company at BNSF Milepost 1.7 at or near Fairmont and the north property line of County Road H, a distance of approximately two miles in Fillmore County, NE. The transaction was to be consummated no sooner than 30 days after the filing of the notice of exemption.

Any comments must be filed with the Board and must be served on applicant's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, ph (312) 236-0204, fax (312) 201-9695, mcfarlandt@aol.com.

This notice of exemption is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

(SEAL)

By the Board